

2006 No. 89

MERCHANT SHIPPING

MASTERS AND SEAMEN

**The Merchant Shipping (Training and Certification and
Minimum Standards of Safety Communications) (Amendment)
Regulations 2006**

<i>Made</i> - - - -	<i>18th January 2006</i>
<i>Laid before Parliament</i>	<i>24th January 2006</i>
<i>Coming into force</i> - -	<i>20th February 2006</i>

The Secretary of State is a Minister designated for the purpose of section 2(2) of the European Communities Act 1972(a) in relation to measures relating to:

- (a) the recognition of higher education diplomas or formal qualifications required for the pursuit of professions or other occupations(b); and
- (b) the safety of ships and the health and safety of persons on them(c);

The Secretary of State for Transport makes these Regulations using his powers under:

- (a) section 2(2) of the European Communities Act 1972; and
- (b) section 47(1), (3) and (4) and section 85(1), (3) and (5) of the Merchant Shipping Act 1995(d);

In so far as these Regulations are made under section 85 of the Merchant Shipping Act 1995 the Secretary of State has consulted the persons referred to in section 86(4) of that Act and in so far as they are made under section 47 of that Act, he has consulted the organisations referred to in section 306(4) of that Act:

Citation, commencement and interpretation

These Regulations may be cited as the Merchant Shipping (Training and Certification and Minimum Standards of Safety Communications) (Amendment) Regulations 2006 and shall come into force on 20th February 2006.

(2) In these Regulations—

(a) 1972 c. 68.
(b) S.I. 2002/248.
(c) S.I. 1993/595.
(d) 1995 c. 21. Sections 85 and 86 were amended by the Merchant Shipping and Maritime Security Act 1997 (c.28), section 8.

“the Training and Certification Regulations” means the Merchant Shipping (Training and Certification) Regulations 1997(a); and

“the Minimum Standards of Safety Communications Regulations” means the Merchant Shipping (Minimum Standards of Safety Communications) Regulations 1997(b).

Amendment to the Training and Certification Regulations

2.—(1) Regulation 2(1) of the Training and Certification Regulations is amended as follows.

(2) The definition of “certificate of equivalent competency” is deleted.

(3) After the definition of “certificate of competency” there is inserted—

“‘certificate of equivalent competency’ means an endorsement in the form of a separate document entitled “certificate of equivalent competency” issued by the Secretary of State in accordance with regulation 5 or 5A to a master, officer or radio operator who holds a certificate issued by or under the authority of another Party to the STCW Convention;”.

(4) After the definition of “constructed” there is inserted—

“‘the Directive’ means Council Directive 2001/25/EC(c) of the European Parliament and of the Council on the minimum level of training of seafarers as amended by Directive 2003/103/EC(d);

‘European Economic Area State’ means a member State, Norway, Iceland or Liechtenstein;”.

(5) After the definition of “liquefied gas tanker” there is inserted—

“‘MCA’ means the Maritime and Coastguard Agency, an executive agency of the Department for Transport;”.

(6) For the definition of “Merchant Shipping Notice” there is substituted—

“‘Merchant Shipping Notice’ means a notice described as such and issued by the MCA”.

(7) After the definition of “tanker” there is added—

“‘third Party’ means a Party to the STCW Convention which is not an European Economic Area State.”.

3. For regulation 5 of the Training and Certification Regulations there is substituted—

“Recognition of certificates issued by EEA States

5.—(1) The Secretary of State may—

(a) recognise a certificate as to competency issued by or on the authority of a European Economic Area State which is a Party to the STCW Convention, to a master, officer or radio operator; and

(b) subject to paragraph (2), on the application of a holder of a certificate described in sub-paragraph (a), issue a certificate of equivalent competency attesting to its recognition.

(2) Subject to paragraphs (3) and (4) the Secretary of State may specify additional standards of competence to be attained, and the means by which such competence may be demonstrated, for the issue of a certificate of equivalent competency pursuant to paragraph (1).

(3) The additional standards of competence referred to in paragraph (2) which are to be attained before a certificate of equivalent competency is issued shall be limited to—

(a) the applicant’s standard of English; and

(a) S.I. 1997/348, amended by S.I. 1997/1911, S.I. 1997/2971, S.I. 2000/836 and S.I. 2004/302.

(b) S.I. 1997/529 amended by S.I. 1999/1704, SI 2004/1266.

(c) O.J. L 136, 18.5.2001, p.17.

(d) O.J. L 326, 13.12.2003, p.28.

(b) his knowledge of United Kingdom maritime legislation and administrative procedures.

(4) An applicant may, instead of demonstrating knowledge of United Kingdom of maritime legislation and administrative procedures, choose to undergo an adaptation period, the duration of which shall be specified by the Secretary of State (but which shall not exceed 3 years).

(5) If an applicant chooses to undergo an adaptation period in accordance with paragraph (4) the Secretary of State shall, for the duration of that period, issue him with a certificate of equivalent competency of such next lower grade as does not require a knowledge of UK maritime legislation and administrative procedures. ”.

4. After regulation 5 of the Training and Certification Regulations, there is inserted—

“Recognition of certificates issued by other states

5A.—(1) The Secretary of State may recognise a certificate issued by or under the authority of a third Party to a master, officer or radio operator if one of the conditions in paragraph (2) applies.

(2) The conditions referred to in paragraph (1) are as follows—

- (a) certificates issued by the third Party are recognised by the Commission in accordance with Article 18 of the Directive and such recognition has not been withdrawn in accordance with Article 18a of the Directive;
- (b) certificates issued by the third Party were recognised by a European Economic Area State as at 14 June 2005 and such recognition has not been withdrawn by the Commission in accordance with Article 18a of the Directive;
- (c) subject to paragraph (5), a request has been made to the Commission by the Secretary of State under Article 18 of the Directive to recognise certificates issued by the third Party and, following the expiry of three months from the time the request was made, no decision has been made by the Commission.

(3) Subject to paragraph (4), where the Secretary of State recognises a certificate pursuant to paragraph (1) he shall, on application of the holder of a certificate, issue a certificate of equivalent competency attesting to its recognition.

(4) Where, pursuant to paragraph (1), the Secretary of State recognises the standard of competence required for the issue of a certificate by a third Party as satisfying only in part the standard required for officers qualified for the purpose of these Regulations, he may specify additional standards of competence which are to be attained, and the means by which such competence may be demonstrated, for the issue of a certificate of equivalent competency.

(5) The additional standards of competence referred to in paragraph (4) shall be limited to—

- (a) the applicant’s standard of English; and
- (b) such training and knowledge as is not required for the certificate issued by the third Party but is required to ensure that the applicant satisfies the standard of competence required for the certificate of equivalent competency to be issued.

(6) The means of demonstrating competence which the Secretary of State may specify include a period of adaptation during which time the Secretary of State may issue the applicant with a certificate of equivalent competency of a lower grade.

(7) Where—

- (a) the Secretary of State recognises a certificate in accordance with paragraph (1) on the basis that the condition referred to in paragraph (2)(c) applies; and
- (b) the Commission decides not to recognise certificates issued by that Party,

the Secretary of State shall withdraw recognition of that certificate and shall cancel any certificates of equivalent competency issued on the basis of that certificate.

(8) Where the Commission withdraws recognition of certificates issued by a third Party in accordance with Article 18a of the Directive—

- (a) certificates of equivalent competency issued on the basis of those certificates before the date of the decision to withdraw recognition shall remain valid; and
- (b) an officer holding a certificate of equivalent competency may not be issued with a certificate of equivalent competency of a higher grade based on a certificate issued by that third Party except where an officer qualifies for a certificate solely on the basis of additional sea service.”.

5. In regulation 7 of the Training and Certification Regulations—

(a) before the words “Any officer” there is inserted “(1) Subject to paragraph (2)”;

(b) after the table there is inserted—

“(2) In the circumstances specified in paragraph (3), where a person does not hold an appropriate certificate the Secretary of State may permit that person to serve in an appropriate capacity on board a ship for a maximum period of three months.

(3) The circumstances specified in paragraph (2) are that—

- (a) the person holds a valid certificate issued by a third Party;
- (b) that certificate is appropriate for the capacity in which the person is to serve; and
- (c) the person has submitted an application under regulation 5A for a certificate of equivalent competency and keeps available for inspection such documents as may be specified by the Secretary of State together with the certificate referred to in paragraph (3)(a).”.

Amendment to the Minimum Standards of Safety Communications Regulations

6. For paragraph (1)(b) of regulation 5 of the Minimum Standards of Safety Communications Regulations there is substituted—

“(b) there are adequate means of communication between the ship’s crew and—

- (i) other ships;
- (ii) shore-based authorities; and
- (iii) pilots; and
- (c) English is used for the communications described in paragraph (b) unless those directly involved in the communications speak a common language other than English.”.

Signed by authority of the Secretary of State

18th January 2006

S.J Ladyman
Minister of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the Merchant Shipping (Training and Certification) Regulations 1997 (the “Training and Certification Regulations”). They also amend the Merchant Shipping (Minimum Standards of Safety Communications) Regulations 1997 (the “Safety of Communications Regulations”).

These Regulations give effect to Council Directive 2003/103/EC (O.J. L 326, 13.12.2003, p.28) (the “Directive”) amending Directive 2001/25/EC (O.J. L136 18.05.2001, p.17) as amended by Directive 2002/84/EC (O.J. L324, 29.11.2002, p. 53) on the minimum level of training for seafarers. The amendments permit the Secretary of State to recognise certificates issued by those States which are not EEA Member States but who are Parties to the International Convention on Standards of Training, Certification and Watchkeeping (“STCW”), 1978 as amended on 7 July 1995 (“third Party States”) in accordance with the Directive.

The Training and Certification Regulations are amended to provide for the decision on whether to recognise the certificates issued to officers by a third Party State to be made by the Commission. The Regulations make such recognition a pre-condition for the Secretary of State to recognise particular certificates (*regulation 4 as it applies to regulation 5A(1) and (2)(a) of the Training and Certification Regulations*).

The Secretary of State may also recognise certificates issued by a third Party State where:

- (a) those certificates were recognised by a member State of the EEA as at 14 June 2005 and that recognition has not been withdrawn by the Commission (*regulation 4 as it applies to regulation 5A(1) and (2)(b)*); or
- (b) a request has been made by the Secretary of State to the Commission to recognise those certificates and three months has elapsed since the request was made without a decision having been made (*regulation 4 as it applies to regulation 5A(1) and (2)(c)*).

The Training and Certification Regulations have also been amended to permit the holder of a valid certificate issued by a third Party State to serve in an appropriate capacity for a maximum period of three months provided that person has made an application to the Secretary of State for recognition of his certificates (*regulation 5, amending regulation 7 of the Training and Certification Regulations*).

The Regulations also amend the Safety of Communications Regulations by making it the duty of the master and company to ensure that English is used as the language of communication in ship to ship and ship to shore communications and in communications with the pilot, except where those directly involved in the communication speak a common language other than English (*regulation 6*).

Copies of the STCW Convention may be obtained from the International Maritime Organisation, 4 Albert Embankment, London, SW1 7SR.

Merchant Shipping Notices are published by the Maritime and Coastguard Agency. Copies may be obtained from Mail Marketing (Scotland), Blooms Grove Industrial Estate, Norton Street, Nottingham NG7 3JG (telephone number 0115 9013336; fax 0115 9013334; e-mail mca@promosolution.com). They may also be obtained from the MCA’s website at www.mcga.gov.uk.

A regulatory impact assessment of the effect of this instrument will have on the costs to business has been prepared and copies can be obtained from the Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton, SO15 1EG. A copy has been placed in the library of each House. The regulatory impact assessment and the transposition note may also be accessed at the Office of Public Sector Information website at www.opsi.gov.uk.

A copy of the Transposition Note is also available from the Maritime and Coastguard Agency.

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